48A C.J.S. Judges § 289

Corpus Juris Secundum | August 2023 Update

Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

b. Relationship

§ 289. Generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges 45

A judge may be disqualified to try a case in which a party litigant is related to the judge by consanguinity or affinity within certain degrees.

The mere fact that a judge has some kind of relationship with someone involved in the case, without more, is insufficient to establish judicial bias or to warrant the judge's removal from the case.[1] The judge is merely privileged to decline jurisdiction.[2] By force of constitutional or statutory provisions, however, relationship by affinity or consanguinity between a judge and a party litigant within certain degrees will disqualify the judge.[3] Under similar provisions, the judge will be disqualified if a person within a certain degree of relationship is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.[4]

It has been held that such provisions are mandatory,[5] but it also has been held that such a constitutional provision does not contain an automatic disqualification but confers a right on litigants, which they may either exercise or waive by consent.[6] Similarly, it has been considered that some statutes containing such a provision are not jurisdictional but create a right to remedial action.[7] In any event, a statute disqualifying a judge on account of relationship to either party to a suit being in derogation of the common law should not be construed as effecting any change in the common law beyond that which is clearly indicated.[8]

Even in the absence of express constitutional or statutory declaration, the disqualification on account of close kinship to one of the parties is comprehended under the requirement of a fair and impartial trial.[9] Thus, where it is reasonable to question impartiality based on the nature of the relationship between a judge and another interested party, recusal is warranted.[10] Relationships which would conclusively disqualify a prospective juror also disqualify a judge.[11]

The relationship must be comprehended within the degree fixed by law.[12] However, the closeness of relationship is immaterial if within the prescribed degree.[13] There is no affinity, within the statute, between blood relations of a husband and blood relations of a wife.[14] Affinity is limited to the relationship between each one of the married pair with the blood relations of the other.[15] The disqualification on the ground of affinity is restricted to affinity subsisting at the time of the challenge for disqualification.[16] Similarly, a judge's former affiliation, alone, is not grounds for disqualification.[17]

The fact that a judge's offspring is employed by a party does not require recusal per se.[18] A judge of a particular court should never preside over a matter involving another judge from the same circuit.[19]

Acquaintance or friend.

A judge's acquaintance with a party, without some factual allegation of bias or prejudice, is not sufficient to warrant recusal.[20] Whether or not disqualification is required when a friend appears as a party to a suit before a judge depends on how personal the relationship is between the judge and the party.[21]

Presumption of relationship being beneficial.

The relationship of a judge to a party in a civil cause will be presumed beneficial and not prejudicial to that party.[22] When the disqualification can be and is waived by the opposite party, it affords no ground for a new trial.[23] However, the relationship of a judge to accused in a criminal case will not be presumed to be beneficial to accused, and the judge may be considered as disqualified at the instance of such accused.[24]

CUMULATIVE SUPPLEMENT

Cases:

The involvement of multiple actors and the passage of time do not relieve a former prosecutor, who is now a judge, of the duty to withdraw from a case in which the judge had significant involvement in making a critical decision as a prosecutor, in order to ensure the neutrality of the judicial process in determining the consequences that his or her own earlier, critical decision may have set in motion. Williams v. Pennsylvania, 136 S. Ct. 1899 (2016).

A family member's financial interest in the subject matter in controversy must be direct, rather than speculative or remote to require the recusal of a judge. Chesapeake Appalachia, L.L.C. v. Scout Petroleum, LLC, 73 F. Supp. 3d 488 (M.D. Pa. 2014).

Trial judge did not have to disqualify himself based on appearance of bias, simply because he had previously served as Deputy District Attorney General with broad and general supervisory authority over defendant's case, where defendant failed to show that trial judge had participated personally or substantially in defendant's case. Tenn. Sup. Ct. Rule 10. State v. Styles, 610 S.W.3d 746 (Tenn. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—In re Medrano Diaz, 182 B.R. 654 (Bankr. D. P.R. 1995).

Ill.—People v. Wright, 189 Ill. 2d 1, 243 Ill. Dec. 198, 723 N.E.2d 230 (1999) (holding modified on other grounds by, People v. Pitsonbarger, 205 Ill. 2d 444, 275 Ill. Dec. 838, 793 N.E.2d 609 (2002)) and (overruled on other grounds by, People v. Boclair, 202 Ill. 2d 89, 273 Ill. Dec. 560, 789 N.E.2d 734 (2002)).

2 Ky.—Allen v. Bach, 233 Ky. 501, 26 S.W.2d 43 (1930).

Tenn.—State ex rel. Knox County v. Adair, 181 Tenn. 655, 184 S.W.2d 17 (1944).

3 Ark.—Sturgis v. Skokos, 335 Ark. 41, 977 S.W.2d 217 (1998).

Ill.—Mank v. Board of Fire and Police Com'rs, Granite City, 7 Ill. App. 3d 478, 288 N.E.2d 49 (5th Dist. 1972).

Pa.—Dennis v. Southeastern Pennsylvania Transp. Authority, 833 A.2d 348 (Pa. Commw. Ct. 2003).

4 U.S.—Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994); Pashaian v. Eccelston Properties, Ltd., 88 F.3d 77 (2d Cir. 1996).

Not limited to purely financial interests

U.S.—In re Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation, 601 F. Supp. 2d 1120 (D. Minn. 2009), aff'd, 623 F.3d 1200 (8th Cir. 2010).

5 Conn.—Dacey v. Connecticut Bar Ass'n, 184 Conn. 21, 441 A.2d 49 (1981).

6 N.M.—Midwest Royalties, Inc. v. Simmons, 1956-NMSC-084, 61 N.M. 399, 301 P.2d 334 (1956).

7 Ind.—Baker v. State, 262 Ind. 543, 319 N.E.2d 344 (1974).

8 Neb.—Zimmerer v. Prudential Ins. Co. of America, 150 Neb. 351, 34 N.W.2d 750 (1948).

9 Ky.—Com., by Cooper v. Howard, 267 Ky. 287, 102 S.W.2d 18 (1937).

N.H.—State v. Aubert, 118 N.H. 739, 393 A.2d 567 (1978).

10 U.S.—In re Medrano Diaz, 182 B.R. 654 (Bankr. D. P.R. 1995).

11 Conn.—Dacey v. Connecticut Bar Ass'n, 184 Conn. 21, 441 A.2d 49 (1981).

12 Ala.—Crowden v. State, 41 Ala. App. 421, 133 So. 2d 678 (1961).

S.D.—State v. Robideau, 262 N.W.2d 52 (S.D. 1978).

13 Ark.—Byler v. State, 210 Ark. 790, 197 S.W.2d 748 (1946).

14 Miss.—McLendon v. State, 187 Miss. 247, 191 So. 821 (1939).

Tex.—Johnson v. State, 169 Tex. Crim. 146, 332 S.W.2d 321 (1960).

15 Tex.—Johnson v. State, 169 Tex. Crim. 146, 332 S.W.2d 321 (1960).

16 S.C.—Ehrhardt v. Breeland, 57 S.C. 142, 35 S.E. 537 (1900).

17 Pa.—Com. v. Abu-Jamal, 553 Pa. 485, 720 A.2d 79 (1998).

18 U.S.—Taylor v. Vermont Dept. of Educ., 313 F.3d 768, 172 Ed. Law Rep. 87 (2d Cir. 2002).

19 Ga.—Smith v. Guest Pond Club, Inc., 277 Ga. 143, 586 S.E.2d 623 (2003).

20 U.S.—In re Wolverine Proctor & Schwartz, LLC, 397 B.R. 179 (Bankr. D. Mass. 2008).

Tex.—Youkers v. State, 400 S.W.3d 200 (Tex. App. Dallas 2013).

Fellow church members

That the trial judge and a motorist were fellow church members and acquaintances did not rise to the level of creating an appearance of impropriety that was required to force the judge to withdraw from a pedestrian's personal-injury action against the motorist.

Tenn.—Liput v. Grinder, 405 S.W.3d 664 (Tenn. Ct. App. 2013).

21 N.H.—Taylor-Boren v. Isaac, 143 N.H. 261, 723 A.2d 577 (1998), as modified on other grounds on denial of reh'g, (Feb. 18, 1999).

22 Ga.—Guthrie v. Peninsular Naval Stores Co., 26 Ga. App. 458, 107 S.E. 260 (1921).

23 Ga.—Guthrie v. Peninsular Naval Stores Co., 26 Ga. App. 458, 107 S.E. 260 (1921).

24 Ga.—Olliff v. State, 1 Ga. App. 553, 57 S.E. 941 (1907).

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